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REPORT
101-371

EXTENSION OF CIVIL PENALTY ASSESSMENT DEMONSTRATION PROGRAM

NOVEMBER 17, 1989.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. ANDERSON, from the Committee on Public Works and Transportation, submitted the following

REPORT

[To accompany H.R. 3671]

The Committee on Public Works and Transportation, to whom was referred the bill (H.R. 3671) to amend the Federal Aviation Act of 1958 to extend the civil penalty assessment demonstration program, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The reported bill, H.R. 3671, continues the status quo for the Civil Penalty Demonstration Program of the Federal Aviation Administration, by extending the program for a brief period of 4 months. This extension will give Congress an opportunity to conduct a comprehensive review of the program to determine how FAA civil penalty cases should be handled in the future.

Under the Federal Aviation Act of 1958, civil penalties may be imposed for violations of the Act or the Federal Aviation Administration's regulations thereunder. The regulations for which civil penalties may be imposed include regulations governing airline security, operations, and maintenance, and regulations governing the activities of airmen holding certificates from FAA.

Prior to enactment of the civil penalty assessment demonstration program in 1987, civil penalties could be imposed only by a United States District Court. This meant that FAA could undertake a civil penalty case only if the agency could persuade a United States Attorney to bring a court case. In asking for authority to assess civil penalties itself, FAA pointed out that United States Attorneys frequently were unwilling to prosecute small civil penalty cases because the U.S. Attorney's offices were understaffed and preferred to devote their limited resources to higher priority cases. FAA also pointed out that Congress had given a large number of other feder-

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al agencies authority to impose civil penalties and that the Administrative Conference of the United States had recommended that Executive Branch Agencies be given this authority. In response to these contentions Congress in 1987 enacted Section 905 of the Federal Aviation Act giving FAA authority to impose civil penalties itself in cases in which the penalties were less than $50,000. This authority was granted through a 2 year demonstration program expiring on December 30, 1989. Under the requirement of Section 905, FAA must give a respondent a full hearing under the Administrative Procedure Act before FAA can impose a civil penalty.

Recent hearings by the Aviation Subcommittee revealed that FAA's demonstration program got off to a slow start because it took the agency 9 months to adopt the necessary regulations.[1] Since that time, FAA has initiated more than 4,000 cases under the program. About 65 percent of these cases involve security violations. These cases involve either an individual attempting to take a weapon through an airport screening system or the failure of an airline to detect an FAA employee testing security by attempting to penetrate the airline's screening system with a demonstration weapon.

There has been considerable controversy about the procedural regulations which FAA adopted to govern the program. A large number of aviation groups testified at the Subcommittee hearings that they believe that the regulations which FAA had adopted fail to comply with the statutory directive that FAA must ~~develop~~ hearing procedures consistent with the requirements of the Administrative Procedure Act. The same conclusion was reached by the Section of Administrative Law and Regulatory Practice of the American Bar Association and the National Conference of Administrative Law Judges.

FAA previously rejected most of these contentions when, in March 1989, FAA refused to make any substantial changes in the regulations. However, at the recent hearings of the Aviation Subcommittee, FAA indicated a willingness to deal with the problems that have been raised. FAA has asked the Administrative Conference of the United States to conduct an evaluation of its civil penalty program and FAA has indicated a willingness to give serious consideration to the recommendations of the Conference. FAA also indicated that it would take a fresh look at the contentions of the persons objecting to the program.

The four month extension of the program provided by H.R. 3671 will give FAA an opportunity to go forward with its commitments. The Committee expects that early next year we will review the program thoroughly and consider possible alternatives for assessment of civil penalties in small aviation cases.

The Committee believes that it would be undesirable to allow the Civil Penalty Program to expire on December 30. If this occurred there would be great uncertainty about the status of the 3,000 or more cases which are now pending. Enforcement could come to a standstill while FAA and the courts reviewed the legal issues

[1] When FAA finally issued the rules, FAA cited the fact that time was running out in the 2-year program as a reason that FAA could not issue a Notice of Proposed Rulemaking and receive comments before issuing a final rule.

which would arise. To avoid this the Committee has reported H.R. 3671, which will extend the program for 4 months pending further Congressional review and a final decision on how to handle these cases.

It should be clearly understood that our brief extension of the program in no way constitutes an endorsement of FAA's regulations. We expect FAA to go forward with its commitment to take a fresh look at the contentions that the program is unfair to respondents.

Committee Action and Vote

With respect to clause 2(l)(2) (a) and (b) of the Rules of the House of Representatives, the Committee, with a majority present favorably reported H.R. 3617 by a voice vote on November 17, 1989.

Oversight Findings and Recommendations

With respect to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that no separate hearings were held on the subject matter of the legislation by the Subcommittee on Investigations and Oversight.

With respect to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has not received a report from the Committee on Government Operations pertaining to the subject matter of the legislation.

Congressional Budget Act Requirements

With respect to clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, and in compliance with section 308(a) of the Congressional Budget Act of 1974, the Committee reports that H.R. 3617 does not provide any new budget authority or new or increased tax expenditures.

With respect to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives no report from the Congressional Budget Office was available at the time this Committee report was filed.

Inflationary Impact Analysis

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee reports that there should be no inflationary impact on prices and costs in the operation of the national economy by enactment of H.R. 3671.

Cost Estimate of Legislation

With respect to clause 7(A)(1) of rule XIII of the Rules of the House of Representatives, the Committee estimates that no significant costs to the Federal Government would result from enactment of H.R. 3671.

With respect to clause 7(A)(2) of the rule XIII of the Rules of the House of Representatives, the Committee reports that no cost estimate of H.R. 3671 was submitted to the Committee by a government agency.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 905 OF THE FEDERAL AVIATION ACT OF 1958

SEC. 905. CIVIL PENALTY ASSESSMENT DEMONSTRATION PROGRAM.

(a) * * *

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(d) LIMITATIONS.—

(1) HEARING.—A civil penalty may be assessed under this section only after notice and opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code.

(2) VIOLATIONS.—This section only applies to civil penalties initiated by the Administrator after the date of the enactment of this section.

(3) MAXIMUM AMOUNT.—The maximum amount of a civil penalty which may be assessed under this section in any case may not exceed $50,000.

(4) EFFECTIVE PERIOD.—The provisions of this section shall only be in effect for the [2-year] *28 month* period beginning on the date of the enactment of this section.

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